IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.625 OF 2005

Shri.Khanderao Sukhadeo Navale ..Petitioner

Vs.

Shri.Sadashiv Daji Aradhi & Ors. ..Respondents

...

Mr.S.V.Kotwal with M.S.Mohite, Advocate for Petitioner
Mr. V.A.Gangal and S.Deshmukh for Respondent no.1
Mr.D.P.Adsule, A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : JULY 11,2005

P.C.

1. Heard the learned advocates for the petitioner i.e. original complainant, respondent i.e. original accused and the learned A.P.P. for the State. The petitioner has lodged a complaint for the offences under Sections 420, 465, 468 r.w. 34 of IPC. The said case is pertaining to C.R.No.62 of 2002 of Trambakeshwar Police Station.

2. The petitioner-complainant is challenging the order dated 23.7.2004 passed by the learned J.M.F.C. IInd Court, Nasik in respect of the report filed by Trimbakeshwar Police Station in C.R.No. 62 of 2002. The police had filed report in the said case and sought ‘C’ summary. By the order dated 23.7.2004, the learned Magistrate granted ‘C’ summary. It is the case of the complainant that before Magistrate granted ‘C’ summary, the complainant was not heard and no notice was given to him.

3. The Supreme Court in the case of **Union Public Service Commission Vs. S.Papaiah and others, [A.I.R.1997 S.C.3876]** has observed that the Magistrate accepting the report of the police and passing of order whereby the proceedings were dropped without issuing notice to the informant was an illegal order. So also in the case of **Bhagwant Singh Vs. Commissioner of Police and another [A.I.R. 1985 S.C. 1285]**, which is a decision of a Bench of three Honourable Judges, in para 4, the Supreme Court observed that "‘C’ summary cannot be

granted without notice to the complainant." Similar view has been taken by the Supreme Court in the case of **Gangadhar Janardan Mhatre Vs. State of Maharashtra and others; [2004(7) S.C.C. 768]**. Thus, in this view of the matter, if the learned Magistrate had not heard the complainant before granting 'C' summary the said order would be illegal. In such case, if the learned Magistrate has not heard the complainant beore granting 'C' summary, he shall hear the complainant and thereafter pass such orders as deemed fit and necessary in accordance with law. The learned Magistrate shall take said decision as far as possible within a period of eight weeks from the date of receipt of this order. All contentions of the parties are left open.

4. Writ Petition is disposed of.

[V.K.TAHILRAMANI,J.]